

USDC SCAN INDEX SHEET



JESSEN

FOLLETT COLLEGE

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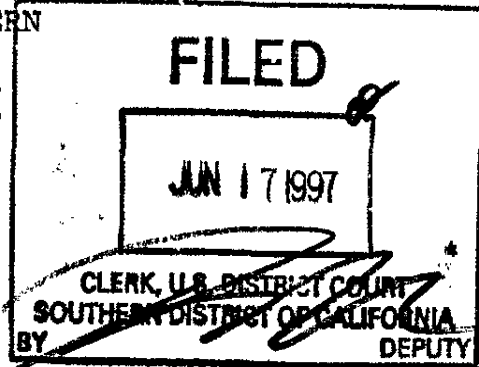
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NTCREM.

1 TERRI L. MASSERMAN, ESQ. (SBN 147815)
2 ROBERT A. MORGENSTERN, ESQ. (SBN 94180)
3 GARCIA, EMMONS, MARANGA & MORGENSTERN
4 A Professional Law Corporation
5 15260 Ventura Boulevard, Suite 1700
6 Sherman Oaks, California 91403-5327
7 (818) 380-0008; (818) 380-0028 Fax

8 Attorneys for Defendant,
9 FOLLETT COLLEGE STORES CORPORATION



10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 KATHLEEN T. JESSEN)

13 Plaintiff,)

14 v.)

15 FOLLETT COLLEGE STORES)
16 CORPORATION, an Illinois)
17 corporation, and DOES 1)
through 25, inclusive,)

Defendants.)

'97 CV 1154 IEG (CGA)

CASE NO. _____

NOTICE OF REMOVAL
OF CIVIL ACTION

(DIVERSITY OF CITIZENSHIP)

[28 U.S. Code Section 1441(a)]

18 TO PLAINTIFF AND TO HER ATTORNEYS OF RECORD:

19
20 Defendant FOLLETT COLLEGE STORES CORPORATION (hereinafter
21 "FOLLETT") hereby serves notice of its removal of the above-
22 entitled action to the United States District Court for the
23 Southern District of California from the San Diego County Superior
24 Court, State of California, and respectfully avers:

25
26 ///

27 ///

28

PLEADINGS AND PROCEEDINGS TO DATE

1
2 1. On or about February 26, 1997, an action was commenced
3 against Defendant in the San Diego County Superior Court, State of
4 California, entitled Kathleen T. Jessen, Plaintiff v. Follett
5 College Stores Corporation, an Illinois Corporation; Paul
6 Schmalhoefer, an individual; Christine Rance, an individual; Peter
7 Lochtefeld, an individual; and DOES 1 through 25, inclusive, under
8 Case No.: 00708379 by the filing of a Summons and Complaint, a copy
9 of which is attached hereto marked Exhibit "A".

10
11 2. On March 4, 1997, a copy of the Summons and Complaint was
12 first served upon Defendant FOLLETT. Defendant FOLLETT is informed
13 and believes that there has been no service of process upon DOES 1
14 through 25.

15
16 3. On May 2, 1997, in the San Diego Superior Court, the
17 Honorable Herbert B. Hoffman, Judge presiding in Department 37,
18 sustained Defendant's Demurrer as to each of the individual
19 Defendants pursuant to California Code of Civil Procedure
20 §430.10(e) based on California case authority set forth in Jankin
21 v. G. M. Hughes Electronics 46 Cal.App.4th 55; 53 Cal.Rptr.2d 741.

22
23
24 4. On May 19, 1997 a copy of plaintiff's First Amended
25 Complaint for Damages against FOLLETT COLLEGE STORES CORPORATION,
26 an Illinois Corporation, and DOES 1 through 25, inclusive was
27 received by Defendant FOLLETT, a copy of which is attached hereto
28

1 marked Exhibit "B".

2
3 5. On May 30, 1997, Defendant FOLLETT filed and served its
4 Answer to Plaintiff's First Amended Complaint, a copy of which is
5 attached hereto marked Exhibit "C".

6
7 6. On June 16, 1997, Defendant FOLLETT filed and served a
8 Notice of Removal to United States District Court, a copy of which
9 is attached hereto marked Exhibit "D".

10
11 7. The foregoing Summons and Complaint, First Amended
12 Complaint, Answer to First Amended Complaint, and Notices attached
13 hereto as Exhibits "A" through "D" constitute all the process,
14 pleadings and order served upon Defendant in the action to date.

15
16 GROUND FOR REMOVAL

17 8. This is a suit of a wholly civil nature brought in a
18 California Court. The action is pending in San Diego County,
19 California and, accordingly, under 28 U.S. Code Section 84(c) and
20 1441(a), the United States District Court for the Central District
21 of California is the proper forum for the removal.

22
23 DIVERSITY OF CITIZENSHIP JURISDICTION

24 9. Defendant FOLLETT is informed and believes that Plaintiff
25 KATHLEEN T. JESSEN is, and at all times relevant was, a resident of
26 San Diego County, California and is, therefore, a citizen of
27 California. Defendant FOLLETT is, and all times relevant was, a
28

1 corporation duly organized and existing under the laws of the State
2 of Illinois with its principal place of business located in the
3 City of River Grove, Illinois and is, therefore, a citizen of
4 Illinois. Defendant is also informed and believes that additional
5 Defendants, DOES 1 through 25, have not been served with Summons
6 and Complaint and have not appeared in the action. Defendant
7 FOLLETT is informed and believes the amount in controversy exceeds
8 \$50,000.00 exclusive of interest and costs. Accordingly, Defendant
9 FOLLETT is informed and believes that there is proper jurisdiction
10 based upon diversity of citizenship pursuant to Title 28 U.S. Code
11 Section 1441(a).

12
13 WHEREFORE, Defendant prays that the above action now pending
14 in the San Diego County Superior Court, State of California, Case
15 No. 00708379, be removed from that Court to the United States
16 District Court.

17
18 DATED: June 16, 1997

GARCIA, EMMONS, MARANGA & MORGENSTERN
A Professional Law Corporation

19
20
21 By 
22

TERRI L. MASSERMAN
Attorneys for Defendant,
FOLLETT COLLEGE STORES CORPORATION

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ARCIA, EMMONS & MARANGA

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EXHIBIT A /

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ARCIA, EMMONS & MARANGA

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SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado)

Follett College Stores Corporation, an Illinois

Corporation; Paul Schmalhoefer, an individual;
Christine Rance, an individual; Peter Lochtefeld,
an individual; and DOES 1 through 25, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le esta demandando)

Kathleen T. Jessen

(Se debe pagar la cuota)

TO: DENNIS
McMAHANFROM: PETER
LOCHTEFELD

You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le tiene un plazo de 30 días para presentar una respuesta escrita.

Una carta o una llamada telefónica no le protegerá; su respuesta debe estar en forma legal si quiere que la corte escuche su caso.

Si usted no presenta su caso a tiempo, pueden perderlo y se le puede quitar su dinero y sus bienes sin más aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

CASE NUMBER (Número del Caso)

00708379

The name and address of the court is: (El nombre y dirección de la corte es)

Superior Court of State of California

San Diego Judicial District

330 West Broadway

San Diego, California 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Patrick P. O'Connor, Esq.

(619) 463-4284

KENNETH E. MARTONE

Clerk of the Superior Court

San Diego County, CA

5464 Grossmont Center Dr., Third Floor

La Mesa, California 91942

DATE: FEB 26 1997
(Fecha)Clerk, by *[Signature]* Deputy
(Actuario) DIANNAH SMITH (Delegado)

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other:

☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (individual)

4. ☒ by personal delivery on (date): 3/4

/ 97

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GARCIA, EMMONS & MARANGA

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PATRICK F. O'CONNOR, (State Bar No. 057923)
 5464 Grossmont Center Drive, Third Floor
 La Mesa, California 91942
 (619) 463-4284

WILLIAM E. MARTINEZ
 Clerk of the Superior Court

FEB 26 1997

Attorney for Plaintiff
 Kathleen T. Jessen

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO

KATHLEEN T. JESSEN

CASE NO. 00708379

Plaintiff,

COMPLAINT FOR DAMAGES BASED
 UPON:

v.

1. BREACH OF CONTRACT
2. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
3. SEX DISCRIMINATION - GENDER [Gov. Code § 12940(a)]
4. AGE DISCRIMINATION [Gov. Code § 12941(a)]
5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
6. NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS

FOLLETT COLLEGE STORES CORPORATION, an Illinois Corporation, PAUL SCHMALHOEFER, an individual; CHRISTINE RANCE, an individual; PETER LOCHTEFELD, an individual; and DOES 1 through 25, inclusive,

Defendants.

JURY TRIAL DEMANDED

Plaintiff KATHLEEN T. JESSEN ("PLAINTIFF" or "JESSEN") alleges as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff is and at all relevant times has been a resident of the County of San Diego, California. At the time of the filing of this lawsuit, plaintiff had been employed as Textbook Manager at the National University branch of Follett College Stores Corporation in San Diego County, California.

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1 2. Plaintiff is informed and believes and on that basis
2 alleges that defendant Follett College Stores Corporation, an
3 Illinois corporation, (hereinafter referred to as "FOLLETT") is
4 qualified to do business in the State of California, and is doing
5 business in the County of San Diego at various locations.

6 3. Plaintiff is informed and believes and on that basis
7 alleges that defendant Paul Schmalhoefer ("SCHMALHOEFER"), an
8 individual is and at all relevant times was an individual and the
9 Zone Manager for FOLLETT.

10 4. Plaintiff is informed and believes and on that basis
11 alleges that defendant Christine Rance ("RANCE"), an individual, is
12 and at all relevant times was an individual and the Regional Manager
13 of FOLLETT.

14 5. Plaintiff is informed and believes and on that basis
15 alleges that defendant Peter LOCHTEFELD ("LOCHTEFELD"), an
16 individual, is and at all relevant times was an individual and the
17 General Manager of the National University Bookstores, San Diego
18 County, and is residing in San Diego County, California.

19 6. The true names and capacities of the defendants named in
20 this Complaint as DOES 1 through 25, inclusive, whether individual,
21 corporate, associate or otherwise, are unknown to plaintiff who
22 therefore sues such defendants by said fictitious names pursuant to
23 California Code of Civil Procedure §474. Plaintiff will amend this
24 complaint to allege such true names and capacities when the same
25 have been ascertained. Plaintiff is informed and believes and on
26 that basis alleges that each of the fictitiously named defendants is
27 in some manner responsible to plaintiff based on the facts alleged
28 in this Complaint.

1 7. Plaintiff is informed and believes and on that basis
2 alleges that at all relevant times, each of the defendants was the
3 agent, employee, representative or supervisor of the remaining
4 defendants and acted at least in part within the course and scope of
5 such relationship.

6 8. The employment contract upon which plaintiff sues was made
7 in the County of San Diego, State of California, and was to be
8 performed in the County of San Diego, California.

9 FIRST CAUSE OF ACTION

10 (Breach of Contract)

11 9. The allegations of paragraphs 1 through 8, inclusive, are
12 incorporated by reference and realleged as though set forth in full.

13 10. Plaintiff was originally hired in 1975 by National
14 University, San Diego, California, to manage its bookstores
15 statewide. Plaintiff continued in this employment until 1988 when
16 defendant FOLLETT leased the store. From 1988 to 1995, plaintiff
17 was the Manager of the National University Bookstore in San Diego.

18 11. In 1995, defendants FOLLETT, SCHMALHOEFER, LOCHTEFELD, and
19 DOES 1 through 25, inclusive, asked plaintiff to manage all of the
20 bookstores of National University statewide. This she did until
21 July 1, 1996, when she was replaced by LOCHTEFELD, a forty-one year
22 old male. His position as regional manager was filled by RANCE, a
23 29 year old female.

24 12. In terms of length of employment, defendants FOLLETT, and
25 DOES 1 through 25, inclusive, consider her to be a twenty-one year
26 employee of FOLLETT.

27 13. In 1995, when FOLLETT's contract with National University
28 was coming to an end, the Vice President of Finance for National

1 University told plaintiff it was up to her to choose the company
2 that would run the National University bookstores. Plaintiff, by
3 this time a twenty-year employee of FOLLETT, selected FOLLETT.

4 14. During the entire course of plaintiff's employment, there
5 existed both an express and an implied in fact employment contract
6 between plaintiff and defendants which, at the time this lawsuit was
7 filed, included, without limitation, the following terms and
8 conditions:

9 a. plaintiff would be able to continue her employment
10 with defendants FOLLETT, SCHMALHOEFER, RANCE, and LOCHTEFELD, and
11 DOES 1 through 25, indefinitely so long as she carried out her
12 duties in a proper and competent manner;

13 b. plaintiff would not be demoted, discharged or
14 otherwise disciplined nor would plaintiff's job functions be
15 reassigned for other than good cause with notice thereof;

16 c. defendants FOLLETT, SCHMALHOEFER, RANCE, and
17 LOCHTEFELD, and DOES 1 through 25, inclusive, would not evaluate
18 plaintiff's performance in an arbitrary, untrue or capricious
19 manner;

20 d. plaintiff would not be subjected to gender
21 discrimination;

22 e. plaintiff would not be subjected to age
23 discrimination;

24 f. plaintiff would not be subjected to actions or
25 conduct designed to humiliate her, criticize her, contrive a
26 disciplinary termination, and/or attempt to force her to resign.

27 15. This employment contract was evidenced by various
28 documents and by oral representations to plaintiff by defendants

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1 FOLLETT, SCHMALHOEFER, RANCE, and LOCHTEFELD, and DOES 1 through 25,
2 inclusive, and the parties' entire course of conduct including,
3 without limitation, the following:

4 a. that in 1988, when FOLLETT took over management of the
5 National University bookstore, plaintiff was made Manager of the San
6 Diego Bookstore;

7 b. that in 1995 plaintiff was asked to and did manage
8 all of the California National University bookstores and was
9 promoted to Regional Manager;

10 c. that plaintiff received commendations for sales and
11 for her work;

12 d. that plaintiff was given a bonus of \$16,000 in 1996;
13 and,

14 e. that plaintiff was given a raise.

15 16. Plaintiff's reliance on and belief in and acceptance in
16 good faith of all the assurances, promises and representations as
17 listed in paragraph 15 above led plaintiff throughout her employment
18 with defendants FOLLETT, SCHMALHOEFER, RANCE, and LOCHTEFELD, and
19 DOES 1 through 25, inclusive, to reasonably believe that her
20 employment was secure and that there consequently existed a contract
21 of continuous employment with FOLLETT, and DOES 1 through 25,
22 inclusive.

23 17. Plaintiff duly performed all the conditions of the
24 contract to be performed by her. Plaintiff has at all times been
25 ready, willing and able to perform and has offered to perform all
26 the conditions of this contract to be performed by her.

27 18. Despite the representations made to plaintiff and the
28 reliance she placed on them, defendants FOLLETT, SCHMALHOEFER,

1 RANCE, and LOCHTEFELD, and DOES 1 through 25, inclusive, failed to
2 carry out their responsibilities under the terms of the employment
3 contract in the following ways:

4 a. by wrongfully demoting plaintiff on or about July 1,
5 1996, in spite of satisfactory job performance;

6 b. by wrongfully reducing her wages from \$20.94 an hour
7 to \$15.67 an hour, a deduction of \$421.60 per pay period;

8 c. by depriving her of the opportunity to earn the store
9 manager bonus;

10 d. by subjecting plaintiff to sex discrimination as
11 hereafter described; and

12 e. by subjecting plaintiff to age discrimination as
13 hereinafter described.

14 19. As a proximate result of the breach by defendants FOLLETT,
15 SCHMALHOEFER, RANCE, and LOCHTEFELD, and DOES 1 through 25,
16 inclusive, of the employment contract, plaintiff has suffered and
17 continues to suffer substantial losses in earnings, bonuses,
18 deferred compensation and other employment benefits which she would
19 have received had defendants FOLLETT, SCHMALHOEFER, RANCE, and
20 LOCHTEFELD, and DOES 1 through 25, inclusive, not breached said
21 agreement, all to her damage in an amount according to proof.

22 WHEREFORE, Plaintiff requests relief as hereinafter provided.

23 SECOND CAUSE OF ACTION

24 (Breach of the Implied Covenant of
25 Good Faith and Fair Dealing)

26 20. The allegations of paragraphs 1 through 8 and paragraphs
27 10 through 19, inclusive, are incorporated by reference and
28 realleged as though set forth in full.

1 21. Implied in every employment agreement is a covenant known
2 as the covenant of good faith and fair dealing, by which the
3 employer promises to deal with an employee fairly and in good faith,
4 that is, to allow the employee to perform her employment obligations
5 to her ability and to enjoy the fruits of her labor. " By this
6 covenant, the employer impliedly promises to not engage in, or allow
7 others to engage in, conduct so as to prevent the employee from
8 performing her obligations. By this covenant, the employer also
9 promises to treat the employee fairly and to not make decisions
10 adverse to her based on her sex, or her age, or in an otherwise
11 arbitrary or capricious manner.

12 22. On or about and between July 1, 1996, and the present,
13 defendants FOLLETT, SCHMALHOEFER, RANCE, and LOCHTEFELD, and DOES 1
14 through 25, inclusive, and each of them, breached this covenant of
15 good faith and fair dealing by engaging in and allowing to take
16 place the actions described in previous and subsequent paragraphs of
17 this complaint.

18 23. As a direct, foreseeable and proximate result of
19 defendants' breach of the implied covenant of good faith and fair
20 dealing, plaintiff has suffered and continues to suffer substantial
21 losses in earnings and job benefits, and has suffered and continues
22 to suffer humiliation, embarrassment, mental and emotional distress,
23 and discomfort, all to her damage in an amount in excess of the
24 minimum jurisdiction of this court, the precise amount of which will
25 be proven at trial.

26 WHEREFORE, plaintiff requests relief as hereinafter provided.

27 ////

28 ////

1 / THIRD CAUSE OF ACTION

2 (Sex Discrimination)

3 24. The allegations of paragraphs 1 through 8, paragraphs 10
4 through 19, and paragraphs 21 through 23, inclusive, are
5 incorporated by reference and realleged as though set forth in full.

6 25. When first hired by defendants in 1988 plaintiff had
7 thirteen (13) years experience managing the National University
8 bookstores. She was hired by defendants as a store manager and was
9 later placed in charge of all National University bookstores as
10 General Manager.

11 26. During the period between 1988, and July of 1996,
12 plaintiff fulfilled her responsibility as General Manager of all the
13 bookstores. In appreciation for her efforts, she was awarded salary
14 increases, bonuses, and commendations in the company.

15 27. As further evidence of her value to the business, in 1995
16 when defendants' contract with National University was ending she
17 secured for FOLLETT a continuing contract.

18 28. During the spring of 1996, LOCHTEFELD informed plaintiff
19 that he had resigned his position as Regional Manager of FOLLETT
20 because he was tired of the travelling. In reality, he had received
21 an unsatisfactory review from the Zone Manager SCHMALHOEFER.

22 29. On or about July, 1996, LOCHTEFELD was placed in
23 plaintiff's store. SCHMALHOEFER announced that LOCHTEFELD would
24 manage all of the National University stores. No mention was made
25 of plaintiff in the announcement but SCHMALHOEFER then met with
26 plaintiff and led her to believe that she would be managing the
27 National University San Diego store.

28 30. On September 10, 1996, plaintiff was informed by

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1 defendants FOLLETT, SCHMALHOEFER, RANCE, LOCHTEFELD, and DOES 1
2 through 25, and each of them, that she was demoted to Textbook
3 Manager.

4 31. On October 3, 1996, plaintiff was informed that her salary
5 had been drastically cut. She also learned that LOCHTEFELD's salary
6 had been rated so that he would be making nearer to what she had
7 earned, with bonus. She also learned that with her unlawful
8 demotion she would no longer be eligible for the size bonus
9 (\$16,000) she had just earned.

10 32. Following her demotion she quickly received a "corrective
11 action" from LOCHTEFELD on October 11, 1996. On November 8, 1996,
12 LOCHTEFELD again gave a "corrective action". It was known to
13 plaintiff that three such written warnings meant she could be
14 terminated.

15 33. When LOCHTEFELD moved into the store he took over
16 plaintiff's desk and went through her files and possessions. He
17 further told her she was never again in line to become manager of
18 the store, even though he was to planning on leaving his post to
19 take a training position in 1997.

20 34. To other employees LOCHTEFELD stated that he disapproved
21 of the action he was taking against plaintiff, that he did what he
22 was doing to plaintiff because his hands were tied, and that he felt
23 "like shit" about what he was doing to plaintiff.

24 35. In 1988, after managing the National University store for
25 13 years, SCHMALHOEFER told plaintiff "It won't take me a year to
26 get rid of you." He told another employee, "She's very pretty but
27 she is not suited to the position."

28 36. Despite the fact that she was made General Manager of all

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1 of the California National University bookstores in 1995, that she
2 received her best review ever in December of 1995, that she received
3 a 5% salary increase, and that she received a \$16,000.00 bonus for
4 her work, she was demoted from General Manager of all of the
5 California bookstores to Textbook Manager in one store and replaced
6 by a younger male, LOCHTEFELD.

7 37. Plaintiff alleges that at another San Diego FOLLETT store,
8 a young male was demoted from his store manager position to Textbook
9 Manager but did not receive a cut in salary. LOCHTEFELD also was
10 demoted and did not take a salary cut.

11 38. Plaintiff alleges that SCHMALHOEFER's daughter, in her
12 late 20's, was hired a year ago as Bookstore Manager at the
13 University of La Verne, and was then transferred to manage the
14 Irvine Valley College bookstore, received a 10% salary increase
15 which was 5% above official guidelines, and has a salary from four
16 to five thousand dollars a year higher than plaintiff.

17 39. At all relevant times, Government Code §12940(a) was in
18 full force and effect and was binding upon defendants FOLLETT,
19 SCHMALHOEFER, RANCE, and LOCHTEFELD, and DOES 1 through 25,
20 inclusive, and each of them. Said statute requires employers such
21 as defendants FOLLETT and DOES 1 through 25, inclusive, and
22 managers, supervisors and co-employees, among other things, to
23 refrain from discriminating against any employee on the basis of
24 gender. Within the time provided by law, plaintiff made a complaint
25 to the California Department of Fair Employment and Housing.
26 Plaintiff has now received her right-to-sue letter from the DFEH, a
27 copy of which is attached hereto as Exhibit "A" and incorporated
28 herein by reference.

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1 40. At all times during her employ with defendants FOLLETT,
2 SCHMALHOEFER, RANCE, and LOCHTEFELD, and DOES 1 through 25,
3 inclusive, plaintiff performed her duties in an appropriate fashion.

4 41. On or about and between the period of July, 1996, and the
5 present, plaintiff was the direct victim of sex discrimination as a
6 result of the previously described conduct, in violation of
7 Government Code §12940(a).

8 42. As a direct, foreseeable and proximate result of
9 defendants' discriminatory acts, Plaintiff has suffered and
10 continues to suffer substantial losses in earnings and job benefits,
11 and has suffered and continues to suffer humiliation, embarrassment,
12 mental and emotional distress, and discomfort, all to her damage in
13 an amount in excess of the minimum jurisdiction of this court, the
14 precise amount of which will be proven at trial.

15 43. Defendants FOLLETT, SCHMALHOEFER, RANCE, and LOCHTEFELD,
16 and DOES 1 through 25, inclusive, and each of them, committed the
17 acts herein alleged maliciously, fraudulently, and oppressively,
18 with the wrongful intention of injuring plaintiff, and acted with an
19 improper and evil motive amounting to malice, and in conscious
20 disregard of plaintiff's rights. The acts taken towards plaintiff
21 were carried out by principals or managerial employees acting in a
22 despicable, deliberate, cold, callous and intentional manner in
23 order to injure and damage plaintiff, thereby entitling plaintiff to
24 recover punitive damages from defendants in an amount according to
25 proof.

26 44. Plaintiff has been required to retain legal services to
27 prosecute this action and is entitled, pursuant to Government Code
28 §12965(b) to an award of reasonable attorney's fees and costs.

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1 WHEREFORE, plaintiff requests relief as hereinafter provided.

2 FOURTH CAUSE OF ACTION

3 (Age Discrimination)

4 45. The allegations of paragraphs 1 through 8, paragraphs 10
5 through 19, paragraphs 21 through 23, and paragraphs 25 through 44,
6 inclusive, are incorporated by reference and realleged as though set
7 forth in full.

8 46. Plaintiff was born on March 31, 1945, making her fifty-one
9 years old at the time of her demotion.

10 47. Plaintiff's demotion, cut in pay, and harassment was
11 unjust in that it was based, in whole or in part, upon her age in
12 violation of Government Code §12941(a).

13 48. At all times herein mentioned, Government Code §12941(a)
14 was binding upon defendants and required them to refrain from
15 discriminating against plaintiff on the basis of her age. On
16 December 6, 1996, plaintiff filed a complaint with the Department of
17 Fair Employment and Housing, alleging discrimination based on age.
18 A "Right to Sue" letter was obtained from the Department on December
19 6, 1996, and is attached hereto as exhibit (A).

20 49. As a direct, foreseeable and proximate result of
21 defendants' demotion of plaintiff in violation of public policy,
22 plaintiff has suffered and continues to suffer substantial losses in
23 earnings and job benefits, and has suffered and continues to suffer
24 humiliation, embarrassment, mental and emotional distress, and
25 discomfort, all to her damage in an amount in excess of the minimum
26 jurisdiction of this court, the precise amount of which will be
27 proven at trial.

28 50. Defendants FOLLETT, SCHMALHOEFER, RANCE, and LOCHTEFELD,

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1 and DOES 1 through 25, inclusive, and each of them, committed the
2 acts herein alleged maliciously, fraudulently, and oppressively,
3 with the wrongful intention of injuring plaintiff, and acted with an
4 improper and evil motive amounting to malice, and in conscious
5 disregard of plaintiff's rights. The acts taken towards plaintiff
6 were carried out by principals or managerial employees acting in a
7 despicable, deliberate, cold, callous and intentional manner in
8 order to injure and damage plaintiff, thereby entitling plaintiff to
9 recover punitive damages from defendants in an amount according to
10 proof.

11 51. Plaintiff has been required to retain legal services to
12 prosecute this action and is entitled, pursuant to Government Code
13 §12965(b) to an award of reasonable attorney's fees and costs.

14 WHEREFORE, plaintiff requests relief as hereinafter provided.

15 FIFTH CAUSE OF ACTION

16 (Intentional Infliction of Emotional Distress)

17 52. The allegations of paragraphs 1 through 8, paragraphs 10
18 through 19, paragraphs 21 through 23, paragraphs 25 through 44, and
19 paragraphs 46 through 51, inclusive, are incorporated by reference
20 and realleged as though set forth in full.

21 53. Defendants FOLLETT, SCHMALHOEPER, RANCE, and LOCHTEFELD,
22 and DOES 1 through 25, inclusive, and each of them, acting on their
23 own and through agents and employees, engaged in the acts heretofore
24 described deliberately and intentionally in order to cause plaintiff
25 severe emotional distress. Alternatively, plaintiff alleges that
26 such conduct was done in reckless disregard of the probability of
27 said conduct causing her severe emotional distress.

28 54. The foregoing conduct did, in fact, cause plaintiff to

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1 suffer severe emotional distress. As a proximate result of said
2 conduct, plaintiff suffered embarrassment, anxiety, humiliation and
3 emotional distress, and will continue to suffer said emotional
4 distress, including, but not limited to, headaches, trouble
5 sleeping, lost appetite, crying, and loss of self esteem, all to her
6 damage in an amount in excess of the minimum jurisdiction of this
7 court, the precise amount of which will be proven at the time of
8 trial.

9 55. Defendants FOLLETT, SCHMALHOEFER, RANCE, and LOCHTEFELD,
10 and DOES 1 through 25, inclusive, and each of them, committed the
11 acts herein alleged maliciously, fraudulently, and oppressively,
12 with the wrongful intention of injuring plaintiff, and acted with an
13 improper and evil motive amounting to malice, and in conscious
14 disregard of plaintiff's rights. The acts taken towards plaintiff
15 were carried out by principals or managerial employees acting in a
16 despicable, deliberate, cold, callous and intentional manner in
17 order to injure and damage plaintiff, thereby entitling plaintiff to
18 recover punitive damages from defendants in an amount according to
19 proof.

20 WHEREFORE, plaintiff requests relief as hereinafter provided.

21 SIXTH CAUSE OF ACTION

22 (Negligent Infliction of Emotional Distress)

23 56. The allegations of paragraphs 1 through 8, paragraphs 10
24 through 19, paragraphs 21 through 23, paragraphs 25 through 44,
25 paragraphs 46 through 51, and paragraphs 53 through 55, inclusive,
26 are incorporated by reference and realleged as though set forth in
27 full.

28 57. Defendants knew, or reasonably should have known, that

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1 their failure to exercise due care in performing the terms and
2 conditions of the employment contract or in meeting the requirements
3 of California Government Code § 12940 et seq. would cause plaintiff
4 severe emotional distress.

5 58. As a proximate result of defendants' conduct and the
6 consequences proximately caused by it, as hereinabove described,
7 plaintiff suffered severe emotional distress and mental suffering,
8 all to her damage in an amount greater than the jurisdictional
9 minimum of this court, the precise amount to be proven at trial.

10 WHEREFORE, plaintiff prays for judgment against Defendants
11 POLLETT, SCHMALHOEFER, RANCE, and LOCETEFELD, and DOES 1 through 25,
12 inclusive, and each of them, as follows:

13 FIRST AND SECOND CAUSES OF ACTION

14 1. For damages for breach of the implied employment contract
15 and covenant of good faith and fair dealing, including, without
16 limitation, losses in earnings, bonuses, deferred compensation,
17 other employment benefits and expenses incurred in obtaining
18 substitute employment, all according to proof;

19 THIRD, FOURTH, FIFTH AND SIXTH CAUSES OF ACTION

20 1. For general damages for emotional distress and mental
21 suffering according to proof;

22 2. For compensatory damages including, without limitation,
23 lost wages, lost employment benefits, bonuses, vacation benefits and
24 other special damages according to proof;

25 3. For prejudgment interest at the legal rate; and,

26 ////

27 ////

28 ////

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THIRD and FOURTH CAUSES OF ACTION

1. For attorneys fees;

THIRD, FOURTH and FIFTH CAUSES OF ACTION

1. For an award of punitive damages in an amount according to proof; and,

ALL CAUSES OF ACTION

1. For costs of suit incurred herein; and
2. For such other and further relief as the court deems just and proper.

Date: February 25, 1997

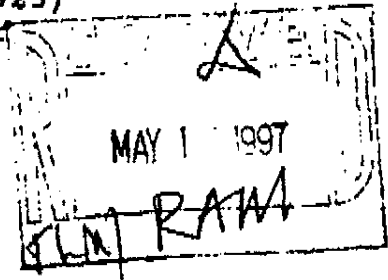
By: 

Patrick P. O'Connor
Attorney for plaintiff
Kathleen T. Jessen

EXHIBIT B /

PATRICK F. O'CONNOR, (State Bar No. 057923)
5464 Grossmont Center Drive, Third Floor
La Mesa, California 91942
(619) 463-4284

Attorney for Plaintiff
Kathleen T. Jessen



SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

KATHLEEN T. JESSEN

Plaintiff,

v.

FOLLETT COLLEGE STORES
CORPORATION, an Illinois
Corporation, and DOES 1 through
25, inclusive,

Defendants.

CASE NO. 708379

FIRST AMENDED COMPLAINT FOR
DAMAGES BASED UPON:

1. BREACH OF CONTRACT
2. SEX DISCRIMINATION -
GENDER
[Gov. Code § 12940(a)]
3. AGE DISCRIMINATION
[Gov. Code § 12941(a)]
4. BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING;
5. INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS;
6. NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS

JURY TRIAL DEMANDED

Judge Herbert B. Hoffman
Dept: 37

Plaintiff KATHLEEN T. JESSEN ("PLAINTIFF" or "JESSEN") alleges
as follows:

FACTS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff is and at all relevant times has been a resident
of the County of San Diego, California. At the time of the filing
of this lawsuit, plaintiff had been employed as Textbook Manager at
the National University branch of Follett College Stores Corporation

1 in San Diego County, California.

2 2. Plaintiff is informed and believes and on that basis
3 alleges that defendant Follett College Stores Corporation, an
4 Illinois corporation, (hereinafter referred to as "FOLLETT") is
5 qualified to do business in the State of California, and is doing
6 business in the County of San Diego at various locations.

7 3. Plaintiff is informed and believes and on that basis
8 alleges that Paul Schmalhoefer ("SCHMALHOEFER"), an individual, is
9 and at all relevant times was an individual and the Zone Manager for
10 FOLLETT.

11 4. Plaintiff is informed and believes and on that basis
12 alleges that Christine Rance ("RANCE"), an individual, is and at all
13 relevant times was an individual and the Regional Manager of
14 FOLLETT.

15 5. Plaintiff is informed and believes and on that basis
16 alleges that Peter LOCHTEFELD ("LOCHTEFELD"), an individual, is and
17 at all relevant times was an individual and the General Manager of
18 the National University Bookstores, San Diego County, and is
19 residing in San Diego County, California.

20 6. The true names and capacities of the defendants named in
21 this Complaint as DOES 1 through 25, inclusive, whether individual,
22 corporate, associate or otherwise, are unknown to plaintiff who
23 therefore sues such defendants by said fictitious names pursuant to
24 California Code of Civil Procedure §474. Plaintiff will amend this
25 complaint to allege such true names and capacities when the same
26 have been ascertained. Plaintiff is informed and believes and on
27 that basis alleges that each of the fictitiously named defendants is
28 in some manner responsible to plaintiff based on the facts alleged

1 in this Complaint.

2 7. Plaintiff is informed and believes and on that basis
3 alleges that at all relevant times, each of the defendants was the
4 agent, employee, representative or supervisor of the remaining
5 defendants and acted at least in part within the course and scope of
6 such relationship.

7 8. The employment contract upon which plaintiff sues was made
8 in the County of San Diego, State of California, and was to be
9 performed in the County of San Diego, California.

10 FIRST CAUSE OF ACTION

11 (Breach of Contract)

12 9. The allegations of paragraphs 1 through 8, inclusive, are
13 incorporated by reference and realleged as though set forth in full.

14 10. Plaintiff was originally hired in 1975 by National
15 University, San Diego, California, to manage its bookstores
16 statewide. Plaintiff continued in this employment until 1988 when
17 defendant FOLLETT leased the store. From 1988 to 1995, plaintiff
18 was the Manager of the National University Bookstore in San Diego.

19 11. In 1995, defendant FOLLETT, and DOES 1 through 25,
20 inclusive, asked plaintiff to manage all of the bookstores of
21 National University statewide. This she did until July 1, 1996,
22 when she was replaced by LOCHTEFELD, a forty-one year old male. His
23 position as regional manager was filled by RANCE, a 29 year old
24 female.

25 12. In terms of length of employment, defendants FOLLETT, and
26 DOES 1 through 25, inclusive, consider her to be a twenty-one year
27 employee of FOLLETT.

28 13. In 1995, when FOLLETT's contract with National University

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1 was coming to an end, the Vice President of Finance for National
2 University told plaintiff it was up to her to choose the company
3 that would run the National University bookstores. Plaintiff, by
4 this time a twenty-year employee of FOLLETT, selected FOLLETT.

5 14. During the entire course of plaintiff's employment, there
6 existed both an express and an implied in fact employment contract
7 between plaintiff and defendants which, at the time this lawsuit was
8 filed, included, without limitation, the following terms and
9 conditions:

10 a. plaintiff would be able to continue her employment
11 with defendant FOLLETT, and DOES 1 through 25, indefinitely so long
12 as she carried out her duties in a proper and competent manner;

13 b. plaintiff would not be demoted, discharged or
14 otherwise disciplined nor would plaintiff's job functions be
15 reassigned for other than good cause with notice thereof;

16 c. defendants FOLLETT, and DOES 1 through 25, inclusive,
17 would not evaluate plaintiff's performance in an arbitrary, untrue
18 or capricious manner;

19 d. plaintiff would not be subjected to gender
20 discrimination;

21 e. plaintiff would not be subjected to age
22 discrimination;

23 f. plaintiff would not be subjected to actions or
24 conduct designed to humiliate her, criticize her, contrive a
25 disciplinary termination, and/or attempt to force her to resign.

26 15. This employment contract was evidenced by various
27 documents and by oral representations to plaintiff by defendants
28 FOLLETT and DOES 1 through 25, inclusive, and the parties' entire

1 course of conduct including, without limitation, the following:

2 a. that in 1988, when FOLLETT took over management of the
3 National University bookstore, plaintiff was made Manager of the San
4 Diego Bookstore;

5 b. that in 1995 plaintiff was asked to and did manage
6 all of the California National University bookstores and was
7 promoted to Regional Manager;

8 c. that plaintiff received commendations for sales and
9 for her work;

10 d. that plaintiff was given a bonus of \$16,000 in 1996;
11 and,

12 e. that plaintiff was given a raise.

13 16. Plaintiff's reliance on and belief in and acceptance in
14 good faith of all the assurances, promises and representations as
15 listed in paragraph 15 above led plaintiff throughout her employment
16 with defendants FOLLETT, and DOES 1 through 25, inclusive, to
17 reasonably believe that her employment was secure and that there
18 consequently existed a contract of continuous employment with
19 FOLLETT, and DOES 1 through 25, inclusive.

20 17. Plaintiff duly performed all the conditions of the
21 contract to be performed by her. Plaintiff has at all times been
22 ready, willing and able to perform and has offered to perform all
23 the conditions of this contract to be performed by her.

24 18. Despite the representations made to plaintiff and the
25 reliance she placed on them, defendants FOLLETT, and DOES 1 through
26 25, inclusive, failed to carry out their responsibilities under the
27 terms of the employment contract in the following ways:
28

1 a. by wrongfully demoting plaintiff on or about July 1,
2 1996, in spite of satisfactory job performance;

3 b. by wrongfully reducing her wages from \$20.94 an hour
4 to \$15.67 an hour, a deduction of \$421.60 per pay period;

5 c. by depriving her of the opportunity to earn the store
6 manager bonus;

7 d. by subjecting plaintiff to sex discrimination as
8 hereafter described; and

9 e. by subjecting plaintiff to age discrimination as
10 hereinafter described.

11 19. As a proximate result of the breach by defendants FOLLETT,
12 and DOES 1 through 25, inclusive, of the employment contract,
13 plaintiff has suffered and continues to suffer substantial losses in
14 earnings, bonuses, deferred compensation and other employment
15 benefits which she would have received had defendants FOLLETT, and
16 DOES 1 through 25, inclusive, not breached said agreement, all to
17 her damage in an amount according to proof.

18 WHEREFORE, Plaintiff requests relief as hereinafter provided.

19 SECOND CAUSE OF ACTION

20 (Sex Discrimination)

21 20. The allegations of paragraphs 1 through 8, paragraphs 10
22 through 19, inclusive, are incorporated by reference and realleged
23 as though set forth in full.

24 21. When first hired by defendants in 1988 plaintiff had
25 thirteen (13) years experience managing the National University
26 bookstores. She was hired by defendants as a store manager and was
27 later placed in charge of all National University bookstores as
28 General Manger.

1 22. During the period between 1988, and July of 1996,
2 plaintiff fulfilled her responsibility as General Manager of all the
3 bookstores. In appreciation for her efforts, she was awarded salary
4 increases, bonuses, and commendations in the company.

5 23. As further evidence of her value to the business, in 1995
6 when defendants' contract with National University was ending she
7 secured for FOLLETT a continuing contract.

8 24. During the spring of 1996, LOCHTEFELD informed plaintiff
9 that he had resigned his position as Regional Manager of FOLLETT
10 because he was tired of the travelling. In reality, he had received
11 an unsatisfactory review from the Zone Manager SCHMALHOEFER.

12 25. On or about July, 1996, LOCHTEFELD was placed in
13 plaintiff's store. SCHMALHOEFER announced that LOCHTEFELD would
14 manage all of the National University stores. No mention was made
15 of plaintiff in the announcement but SCHMALHOEFER then met with
16 plaintiff and led her to believe that she would be managing the
17 National University San Diego store.

18 26. On September 10, 1996, plaintiff was informed by
19 defendants FOLLETT and DOES 1 through 25, and each of them, that she
20 was demoted to Textbook Manager.

21 27. On October 3, 1996, plaintiff was informed that her salary
22 had been drastically cut. She also learned that LOCHTEFELD's salary
23 had been rated so that he would be making nearer to what she had
24 earned, with bonus. She also learned that with her unlawful
25 demotion she would no longer be eligible for the size bonus
26 (\$16,000) she had just earned.

27 28. Following her demotion she quickly received a "corrective
28 action" from LOCHTEFELD on October 11, 1996. On November 8, 1996,

1 LOCHTEFELD again gave her a "corrective action". It was known to
2 plaintiff that three such written warnings meant she could be
3 terminated.

4 29. When LOCHTEFELD moved into the store he took over
5 plaintiff's desk and went through her files and possessions. He
6 further told her she was never again in line to become manager of
7 the store, even though he was to planning on leaving his post to
8 take a training position in 1997.

9 30. To other employees LOCHTEFELD stated that he disapproved
10 of the action he was taking against plaintiff, that he did what he
11 was doing to plaintiff because his hands were tied, and that he felt
12 "like shit" about what he was doing to plaintiff.

13 31. In 1988, after managing the National University store for
14 13 years, SCHMALHOEFER told plaintiff "It won't take me a year to
15 get rid of you." He told another employee, "She's very pretty but
16 she is not suited to the position."

17 32. Despite the fact that she was made General Manager of all
18 of the California National University bookstores in 1995, that she
19 received her best review ever in December of 1995, that she received
20 a 5% salary increase, and that she received a \$16,000.00 bonus for
21 her work, she was demoted from General Manager of all of the
22 California bookstores to Textbook Manager in one store and replaced
23 by a younger male, LOCHTEFELD.

24 33. Plaintiff alleges that at another San Diego FOLLETT store,
25 a young male was demoted from his store manager position to Textbook
26 Manager but did not receive a cut in salary. LOCHTEFELD also was
27 demoted and did not take a salary cut.

1 34. Plaintiff alleges that SCHMALHOEFER's daughter, in her
2 late 20's, was hired a year ago as Bookstore Manager at the
3 University of La Verne, and was then transferred to manage the
4 Irvine Valley College bookstore, received a 10% salary increase
5 which was 5% above official guidelines, and has a salary from four
6 to five thousand dollars a year higher than plaintiff.

7 35. At all relevant times, Government Code §12940(a) was in
8 full force and effect and was binding upon defendants FOLLETT, and
9 DOES 1 through 25, inclusive, and each of them. Said statute
10 requires employers such as defendants FOLLETT and DOES 1 through 25,
11 inclusive, and managers, supervisors and co-employees, among other
12 things, to refrain from discriminating against any employee on the
13 basis of gender. Within the time provided by law, plaintiff made a
14 complaint to the California Department of Fair Employment and
15 Housing (DFEH). Plaintiff has now received her right-to-sue letter
16 from the DFEH, a copy of which is attached hereto as Exhibit "A" and
17 incorporated herein by reference.

18 36. At all times during her employ with defendants FOLLETT,
19 and DOES 1 through 25, inclusive, plaintiff performed her duties in
20 an appropriate fashion.

21 37. On or about and between the period of July, 1996, and the
22 present, plaintiff was the direct victim of sex discrimination as a
23 result of the previously described conduct, in violation of
24 Government Code §12940(a).

25 38. As a direct, foreseeable and proximate result of
26 defendants' discriminatory acts, Plaintiff has suffered and
27 continues to suffer substantial losses in earnings and job benefits,
28 and has suffered and continues to suffer humiliation, embarrassment,

1 mental and emotional distress, and discomfort, all to her damage in
2 an amount in excess of the minimum jurisdiction of this court, the
3 precise amount of which will be proven at trial.

4 39. Defendants FOLLETT and DOES 1 through 25, inclusive, and
5 each of them, committed the acts herein alleged maliciously,
6 fraudulently, and oppressively, with the wrongful intention of
7 injuring plaintiff, and acted with an improper and evil motive
8 amounting to malice, and in conscious disregard of plaintiff's
9 rights. The acts taken towards plaintiff were carried out by
10 principals or managerial employees acting in a despicable,
11 deliberate, cold, callous and intentional manner in order to injure
12 and damage plaintiff, thereby entitling plaintiff to recover
13 punitive damages from defendants in an amount according to proof.

14 40. Plaintiff has been required to retain legal services to
15 prosecute this action and is entitled, pursuant to Government Code
16 §12965(b) to an award of reasonable attorney's fees and costs.

17 WHEREFORE, plaintiff requests relief as hereinafter provided.

18 THIRD CAUSE OF ACTION

19 (Age Discrimination)

20 41. The allegations of paragraphs 1 through 8, paragraphs 10
21 through 19, and paragraphs 21 through 40, inclusive, are
22 incorporated by reference and realleged as though set forth in full.

23 42. Plaintiff was born on March 31, 1945, making her fifty-one
24 years old at the time of her demotion.

25 43. Plaintiff's demotion, cut in pay, and harassment was
26 unjust in that it was based, in whole or in part, upon her age in
27 violation of Government Code §12941(a).

1 44. At all times herein mentioned, Government Code §12941(a)
2 was binding upon defendants and required them to refrain from
3 discriminating against plaintiff on the basis of her age. On
4 December 6, 1996, plaintiff filed a complaint with the Department of
5 Fair Employment and Housing, alleging discrimination based on age.
6 A "Right to Sue" letter was obtained from the Department on December
7 6, 1996, and is attached hereto as exhibit (A).

8 45. As a direct, foreseeable and proximate result of
9 defendants' demotion of plaintiff in violation of public policy,
10 plaintiff has suffered and continues to suffer substantial losses in
11 earnings and job benefits, and has suffered and continues to suffer
12 humiliation, embarrassment, mental and emotional distress, and
13 discomfort, all to her damage in an amount in excess of the minimum
14 jurisdiction of this court, the precise amount of which will be
15 proven at trial.

16 46. Defendants FOLLETT, and DOES 1 through 25, inclusive, and
17 each of them, committed the acts herein alleged maliciously,
18 fraudulently, and oppressively, with the wrongful intention of
19 injuring plaintiff, and acted with an improper and evil motive
20 amounting to malice, and in conscious disregard of plaintiff's
21 rights. The acts taken towards plaintiff were carried out by
22 principals or managerial employees acting in a despicable,
23 deliberate, cold, callous and intentional manner in order to injure
24 and damage plaintiff, thereby entitling plaintiff to recover
25 punitive damages from defendants in an amount according to proof.

26 47. Plaintiff has been required to retain legal services to
27 prosecute this action and is entitled, pursuant to Government Code
28 §12965(b) to an award of reasonable attorney's fees and costs.

1 WHEREFORE, plaintiff requests relief as hereinafter provided.

2 FOURTH CAUSE OF ACTION

3 (Breach of the Implied Covenant of
4 Good Faith and Fair Dealing)

5 48. The allegations of paragraphs 1 through 8 and paragraphs
6 10 through 19, paragraphs 21 through 40, and paragraphs 42* through
7 47, inclusive, are incorporated by reference and realleged as though
8 set forth in full.

9 49. Implied in every employment agreement is a covenant known
10 as the covenant of good faith and fair dealing, by which the
11 employer promises to deal with an employee fairly and in good faith,
12 that is, to allow the employee to perform her employment obligations
13 to her ability and to enjoy the fruits of her labor. By this
14 covenant, the employer impliedly promises to not engage in, or allow
15 others to engage in, conduct so as to prevent the employee from
16 performing her obligations. By this covenant, the employer also
17 promises to treat the employee fairly and to not make decisions
18 adverse to her based on her sex, or her age, or in an otherwise
19 arbitrary or capricious manner.

20 50. On or about and between July 1, 1996, and the present,
21 defendants FOLLETT, andd DOES 1 through 25, inclusive, and each of
22 them, breached this covenant of good faith and fair dealing by
23 engaging in and allowing to take place the actions described in
24 previous and subsequent paragraphs of this complaint.

25 51. As a direct, foreseeable and proximate result of
26 defendants' breach of the implied covenant of good faith and fair
27 dealing, plaintiff has suffered and continues to suffer substantial
28 losses in earnings and job benefits, and has suffered and continues

1 to suffer humiliation, embarrassment, mental and emotional distress,
2 and discomfort, all to her damage in an amount in excess of the
3 minimum jurisdiction of this court, the precise amount of which will
4 be proven at trial.

5 WHEREFORE, plaintiff requests relief as hereinafter provided.

6 FIFTH CAUSE OF ACTION

7 (Intentional Infliction of Emotional Distress)

8 52. The allegations of paragraphs 1 through 8, paragraphs 10
9 through 19, paragraphs 21 through 40, paragraphs 42 through 47, and
10 paragraphs 49 through 51, inclusive, are incorporated by reference
11 and realleged as though set forth in full.

12 53. Defendants FOLLETT, and DOES 1 through 25, inclusive, and
13 each of them, acting on their own and through agents and employees,
14 engaged in the acts heretofore described deliberately and
15 intentionally in order to cause plaintiff severe emotional distress.
16 Alternatively, plaintiff alleges that such conduct was done in
17 reckless disregard of the probability of said conduct causing her
18 severe emotional distress.

19 54. The foregoing conduct did, in fact, cause plaintiff to
20 suffer severe emotional distress. As a proximate result of said
21 conduct, plaintiff suffered embarrassment, anxiety, humiliation and
22 emotional distress, and will continue to suffer said emotional
23 distress, including, but not limited to, headaches, trouble
24 sleeping, lost appetite, crying, and loss of self esteem, all to her
25 damage in an amount in excess of the minimum jurisdiction of this
26 court, the precise amount of which will be proven at the time of
27 trial.

1 55. Defendants FOLLETT, and DOES 1 through 25, inclusive, and
2 each of them, committed the acts herein alleged maliciously,
3 fraudulently, and oppressively, with the wrongful intention of
4 injuring plaintiff, and acted with an improper and evil motive
5 amounting to malice, and in conscious disregard of plaintiff's
6 rights. The acts taken towards plaintiff were carried out by
7 principals or managerial employees acting in a despicable,
8 deliberate, cold, callous and intentional manner in order to injure
9 and damage plaintiff, thereby entitling plaintiff to recover
10 punitive damages from defendants in an amount according to proof.

11 WHEREFORE, plaintiff requests relief as hereinafter provided.

12 SIXTH CAUSE OF ACTION

13 (Negligent Infliction of Emotional Distress)

14 56. The allegations of paragraphs 1 through 8, paragraphs 10
15 through 19, paragraphs 21 through 40, paragraphs 42 through 47, and
16 paragraphs 49 through 51, inclusive, are incorporated by reference
17 and realleged as though set forth in full.

18 57. Defendants knew, or reasonably should have known, that
19 their failure to exercise due care in performing the terms and
20 conditions of the employment contract or in meeting the requirements
21 of California Government Code § 12940 et seq. would cause plaintiff
22 severe emotional distress.

23 58. As a proximate result of defendants' conduct and the
24 consequences proximately caused by it, as hereinabove described,
25 plaintiff suffered severe emotional distress and mental suffering,
26 all to her damage in an amount greater than the jurisdictional
27 minimum of this court, the precise amount to be proven at trial.

EXHIBIT A

JUN-16-1997 14:07

ARCIA, EMMONS & MARANGA

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P.51/69

STATE OF CALIFORNIA - STATE AND CONSUMER SERVICES AGENCY

PETE WILSON, Governor

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

110 West "C" Street, #1702, San Diego, CA 92101-3901
(619) 645-2681 TDD (213) 897-2840 FAX (619) 645-2683



December 6, 1996

KATHLEEN T. JESSEN
6244 Camino Largo
San Diego, CA 92120

E9697-D-0779-00asc
JESSEN/FOLLETT COLLEGE STORES

NOTICE OF CASE CLOSURE

Dear Ms. JESSEN:

The consultant assigned to handle subject discrimination complaint which you filed with the Department of Fair Employment and Housing (DFEH) has recommended that the case be closed on the basis of Complainant elected court action.

Please be advised that this recommendation has been accepted and your case has been closed effective December 6, 1996.

Since the DFEH will not be pursuing an accusation in your case, you have the right to file a private lawsuit in a California Justice, Municipal or Superior court. In the event a settlement agreement was signed resolving your complaint, it is likely that you have waived your right to file a private lawsuit. If that is the case, the following paragraph does not pertain to your circumstances.

If you have not already been notified of your right to file a private lawsuit, you have one year from the date of this letter to do so. (Refer to California Government Code Section 12965(b).) This case may be referred to the U.S. Equal Employment Opportunity Commission for further investigation.

JUN-16-1997 14:07

GARCIA, EMMONS & MARANGA

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**Notice of Case Closure
Page Two**

You should be aware that the Department of Fair Employment and Housing does not retain case files beyond three years after a complaint is filed, unless the case is still open at the end of the three-year period.

Sincerely,


Gaspar Oliveira
District Administrator

cc: File

Director
Personnel/Human Resources
FOLLETT COLLEGE STORES
400 W. Grand Avenue
Elmhurst, IL 60126-0888

DFEH-200-08(06/94)

EXHIBIT C

1 TERRI L. MASSERMAN, ESQ. (SBN NO. 147815)
2 GARCIA, EMMONS, MARANGA & MORGENSTERN
3 15260 VENTURA BLVD., SUITE 1700
4 SHERMAN OAKS, CA 91403-5327
5 (818) 380-0008; (213) 877-1277

F KENNETH E. MARTONE
Clerk of the Superior Court

MAY 30 1997

6 Attorneys for Defendant,
7 FOLLETT COLLEGE STORES CORPORATION

By: Dep.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10
11 . FOR THE COUNTY OF SAN DIEGO

12 KATHLEEN T. JESSEN,) CASE NO. 00708379
13 Plaintiff,)
14 vs.) FOLLETT COLLEGE STORES
15 FOLLETT COLLEGE STORES) CORPORATION'S ANSWER TO
16 CORPORATION, an Illinois) PLAINTIFF'S FIRST AMENDED
17 corporation, and DOES 1 through) COMPLAINT
18 25, inclusive,)
19 Defendants.)

20 COMES NOW, defendant, FOLLETT COLLEGE STORES CORPORATION, an
21 Illinois corporation, and answer plaintiff's complaint for damages
22 except for the Fifth Cause of Action, (plaintiff having voluntarily
23 dismissed that clam without prejudice) as follows:

24 1. Pursuant to the provisions of Section 431.30 of the
25 California Code of Civil Procedure, defendant denies generally and
26 specifically each and every allegation contained in plaintiff's
27 unverified complaint and denies that plaintiff has sustained damages
28 in any sum or sums alleged, or any other sum, or at all, by reason
of he act, breach or omission by defendants.

FIRST SEPARATE DEFENSE

2. The complaint and each and every alleged cause of action fails to state facts sufficient to constitute a cause of action against this answering defendant.

SECOND AFFIRMATIVE DEFENSE

3. This answering defendant is informed and believes^{*} and on that basis alleges plaintiff has failed to mitigate any damages plaintiff alleges she has suffered and further alleges that to the extent any damages would have been mitigated, such sums should be deducted from the alleged damages.

THIRD SEPARATE DEFENSE

4. Plaintiff's exclusive remedy, if any, is the California Fair Employment and Housing Act.

FOURTH SEPARATE DEFENSE

5. This answering defendant is informed and believe that plaintiff has failed to exhaust her administrative remedies.

FIFTH SEPARATE DEFENSE

6. Portions of plaintiff's complaint, if not all, are barred because plaintiff's exclusive remedy, if any, is the Workers' Compensation Act.

SIXTH SEPARATE DEFENSE

7. The individual defendants are immune from liability pursuant to the manager's immunity.

SEVENTH SEPARATE DEFENSE

8. There was no unlawful discrimination or unlawful denial of benefits.

EIGHTH SEPARATE DEFENSE

9. That the damages, if any, sustained by plaintiff were

1 sustained, in whole or in part, as a direct and proximate result of
2 plaintiff's own conduct, and if plaintiff recovers any sum or sums
3 whatsoever herein, such amount or amounts should and must be reduced
4 in proportion to the extent of plaintiff's own conduct which
5 proximately caused in whole or in part, plaintiff's claimed injuries
6 and damages, and if there is a judgment in favor of said plaintiff
7 and against this answering defendant, this answering defendant may
8 be entitled to partial indemnification on a comparative fault basis.

9 NINTH SEPARATE DEFENSE

10 10. Pursuant to California Civil Code section 3294, plaintiff
11 is not entitled to recovery punitive damages against this answering
12 defendant.

13 TENTH AFFIRMATIVE DEFENSE

14 11. All actions taken were an exercise of managerial
15 discretion and/or legitimate business judgment.

16 ELEVENTH SEPARATE DEFENSE

17 12. Plaintiff is estopped from asserting any claim against
18 defendant by virtue of her own conduct.

19 TWELFTH SEPARATE DEFENSE

20 13. There was no intent to discriminate or to cause emotional
21 distress.

22 THIRTEENTH SEPARATE DEFENSE

23 14. Plaintiff was not discriminated against on the basis of
24 sex or otherwise.

25 FOURTEENTH SEPARATE DEFENSE

26 15. Plaintiff is barred from recovery pursuant to the
27 provisions of Labor Code sections 2854,
28 2856, 2857, 2858, and 2859.

JUN-16-1997 14:10

GARCIA, EMMONS & MARANGA

818 380 0028 P.57/69

FIFTEENTH SEPARATE DEFENSE

16. This answering defendant is informed and believes that plaintiff did not suffer any severe emotional distress.

SIXTEENTH SEPARATE DEFENSE

17. The conduct complained of by plaintiff was not severe or pervasive.

SEVENTEENTH SEPARATE DEFENSE

18. There were no malicious, fraudulent or oppressive acts by this answering defendant.

EIGHTEENTH SEPARATE DEFENSE

19. There were no despicable acts by defendants.

WHEREFORE, defendant, FOLLETT COLLEGE STORES CORPORATION, prays as follows:

1. That plaintiff take nothing by her complaint;
2. That judgment be in favor of defendants;
3. For attorney's fees;
4. That defendant recovers its costs of action herein expended; and

5. For such other relief as the court may deem proper.

DATED: May 28, 1997

GARCIA, EMMONS, MARANGA & MORGENSTERN
A Professional Law Corporation

By: 

TERRI L. MASSERMAN

Attorneys for Defendant

FOLLETT COLLEGE STORES CORPORATION

st\jedean\ansrlat.cwp

JUN-16-1997 14:11

GARCIA, EMMONS & MARANGA

F KENNETH E. MARI
Clerk of the Superior Court

PROOF OF SERVICE - 1013A, 2015.5 C.C.P.

MAY 30 1997

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

By: 

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15260 Ventura Boulevard, Suite 1700, Sherman Oaks, California 91403-5327.

On today's date, I served the foregoing document described as: FOLLETT COLLEGE STORES CORPORATION'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT on the interested parties in this action by placing true copies thereof enclosed in (a) sealed envelope(s) addressed as follows:

PATRICK F. O'CONNOR, ESQ.
5464 Grossmont Center Drive
Third Floor
La Mesa, CA 91942

I caused such envelope to be deposited in the mail at Sherman Oaks, California, with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on 5/28, 1997, at Sherman Oaks, California.


Susan Tarbouche

JUN-16-1997 14:11

MARCIA, EMMONS & MARANGA

818 380 0028 P.59/69

EXHIBIT D

JUN-16-1997 14:12

GARCIA, EMMONS & MARANGA

818 380 0028 P.60/69

1 TERRI L. MASSERMAN, ESQ. (SBN 147815)
ROBERT A. MORGENSTERN, ESQ. (SBN 94180)
2 GARCIA, EMMONS, MARANGA & MORGENSTERN
A Professional Law Corporation
3 15260 Ventura Boulevard, Suite 1700
Sherman Oaks, California 91403-5327
4 (818) 380-0008; (818) 380-0028 Fax

5 Attorneys for Defendant,
FOLLETT COLLEGE STORES CORPORATION
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO
10

11 KATHLEEN T. JESSEN)	CASE NO. 00708379
)	
12 Plaintiff,)	NOTICE OF REMOVAL
)	TO UNITED STATES DISTRICT COURT
13 v.)	
)	
14 FOLLETT COLLEGE STORES)	
CORPORATION, an Illinois)	
15 corporation, and DOES 1)	
through 25, inclusive,)	
16)	
Defendants.)	
17)	

18
19 TO PLAINTIFF KATHLEEN JESSEN AND TO HER ATTORNEYS OF RECORD:
20

21 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Defendant
22 FOLLETT COLLEGE STORES CORPORATION has removed the above-entitled
23 action to the United States District Court for the Southern
24 District of California. Attached hereto as Exhibit "A" is a copy
25 of the Notice of Removal, the original of which has been filed with
26

27 ///

28 ///

JUN-16-1997 14:12

GARCIA, EMMONS & MARANGA

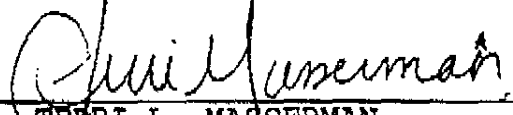
818 380 0028 P.61/68

1 the United States District Court for the Southern District of
2 California.

3
4 DATED: June 16, 1997

GARCIA, EMMONS, MARANGA & MORGENSTERN
A Professional Law Corporation

5
6 By


7 TERRI L. MASSERMAN
8 Attorneys for Defendant,
9 FOLLETT COLLEGE STORES CORPORATION
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JUN-16-1997 14:45

GARCIA, EMMONS & MARANGA

818 380 0028 P.01/08

EXHIBIT A /

JUN-16-1997 14:46

GARCIA, EMMONS & MARANGA

818 380 0028 P.02/08

TERRI L. MASSERMAN, ESQ. (SBN 147815)
 ROBERT A. MORGENSTERN, ESQ. (SBN 94180)
 GARCIA, EMMONS, MARANGA & MORGENSTERN
 A Professional Law Corporation
 15260 Ventura Boulevard, Suite 1700
 Sherman Oaks, California 91403-5327
 (818) 380-0008; (818) 380-0028 Fax

Attorneys for Defendant,
 FOLLETT COLLEGE STORES CORPORATION

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

KATHLEEN T. JESSEN)	CASE NO. _____
)	
Plaintiff,)	NOTICE OF REMOVAL
)	OF CIVIL ACTION
v.)	
)	(DIVERSITY OF CITIZENSHIP)
FOLLETT COLLEGE STORES)	
CORPORATION, an Illinois)	[28 U.S. Code Section 1441(a)]
corporation, and DOES 1)	
through 25, inclusive,)	
)	
Defendants.)	

TO PLAINTIFF AND TO HER ATTORNEYS OF RECORD:

Defendant FOLLETT COLLEGE STORES CORPORATION (hereinafter
 "FOLLETT") hereby serves notice of its removal of the above-
 entitled action to the United States District Court for the
 Southern District of California from the San Diego County Superior
 Court, State of California, and respectfully avers:

///

///

JUN-16-1997 14:46

ARCIA, EMMONS & MARANGA

818 380 0028 P.03/08

PLEADINGS AND PROCEEDINGS TO DATE

1. On or about February 26, 1997, an action was commenced against Defendant in the San Diego County Superior Court, State of California, entitled Kathleen T. Jessen, Plaintiff v. Follett College Stores Corporation, an Illinois Corporation; Paul Schmalhoefer, an individual; Christine Rance, an individual; Peter Lochtefeld, an individual; and DOES 1 through 25, inclusive, under Case No.: 00708379 by the filing of a Summons and Complaint, a copy of which is attached hereto marked Exhibit "A".

2. On March 4, 1997, a copy of the Summons and Complaint was first served upon Defendant FOLLETT. Defendant FOLLETT is informed and believes that there has been no service of process upon DOES 1 through 25.

3. On May 2, 1997, in the San Diego Superior Court, the Honorable Herbert B. Hoffman, Judge presiding in Department 37, sustained Defendant's Demurrer as to each of the individual Defendants pursuant to California Code of Civil Procedure §430.10(e) based on California case authority set forth in Jankin v. G. M. Hughes Electronics 46 Cal.App.4th 55; 53 Cal.Rptr.2d 741.

4. On May 19, 1997 a copy of plaintiff's First Amended Complaint for Damages against FOLLETT COLLEGE STORES CORPORATION, an Illinois Corporation, and DOES 1 through 25, inclusive was received by Defendant FOLLETT, a copy of which is attached hereto

JUN-16-1997 14:47

GARCIA, EMMONS & MARANGA

818 380 0028 P.04/08

1 marked Exhibit "B".

2
3 5. On May 30, 1997, Defendant FOLLETT filed and served its
4 Answer to Plaintiff's First Amended Complaint, a copy of which is
5 attached hereto marked Exhibit "C".

6
7 6. On June 16, 1997, Defendant FOLLETT filed and served a
8 Notice of Removal to United States District Court, a copy of which
9 is attached hereto marked Exhibit "D".

10
11 7. The foregoing Summons and Complaint, First Amended
12 Complaint, Answer to First Amended Complaint, and Notices attached
13 hereto as Exhibits "A" through "D" constitute all the process,
14 pleadings and order served upon Defendant in the action to date.

15
16 GROUND FOR REMOVAL

17 8. This is a suit of a wholly civil nature brought in a
18 California Court. The action is pending in San Diego County,
19 California and, accordingly, under 28 U.S. Code Section 84(c) and
20 1441(a), the United States District Court for the Central District
21 of California is the proper forum for the removal.

22
23 DIVERSITY OF CITIZENSHIP JURISDICTION

24 9. Defendant FOLLETT is informed and believes that Plaintiff
25 KATHLEEN T. JESSEN is, and at all times relevant was, a resident of
26 San Diego County, California and is, therefore, a citizen of
27 California. Defendant FOLLETT is, and all times relevant was, a
28

JUN-16-1997 14:47

GARCIA, EMMONS & MARANGA

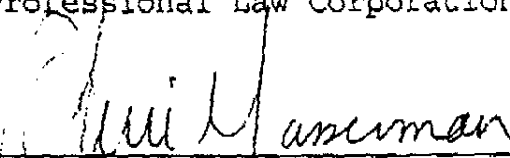
1 corporation duly organized and existing under the laws of the State
2 of Illinois with its principal place of business located in the
3 City of River Grove, Illinois and is, therefore, a citizen of
4 Illinois. Defendant is also informed and believes that additional
5 Defendants, DOES 1 through 25, have not been served with Summons
6 and Complaint and have not appeared in the action. Defendant
7 FOLLETT is informed and believes the amount in controversy exceeds
8 \$50,000.00 exclusive of interest and costs. Accordingly, Defendant
9 FOLLETT is informed and believes that there is proper jurisdiction
10 based upon diversity of citizenship pursuant to Title 28 U.S. Code
11 Section 1441(a).

12
13 WHEREFORE, Defendant prays that the above action now pending
14 in the San Diego County Superior Court, State of California, Case
15 No. 00708379, be removed from that Court to the United States
16 District Court.

17
18 DATED: June 16, 1997

GARCIA, EMMONS, MARANGA & MORGENSTERN
A Professional Law Corporation

19
20
21 By


22 TERRI L. MASSERMAN
Attorneys for Defendant,
FOLLETT COLLEGE STORES CORPORATION

JUN-16-1997 14:49

ARCIA, EMMONS & MARANGA

818 380 0028 P.08/08

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 15260 Ventura Boulevard, Suite 1700, Sherman Oaks, California 91403.

On June 16, 1997, I served the forgoing document described as NOTICE OF REMOVAL OF CIVIL ACTION on the interested parties in this action as follows:

PATRICK F. O'CONNOR, ESQ.
5464 Grossmont Center Drive
Third Floor
La Mesa, CA 91942

 x By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing of mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sherman oaks, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after the day of deposit for mailing an affidavit.


 By Telefax. I forwarded such document by telefax to the offices of the addressee(s).

 By Personal Service. I delivered such envelope by hand to the addressee(s).

 By Overnight Courier. I caused the above referenced document to be delivered to an overnight courier service for delivery to the above addressee(s).

Executed on June 16, 1997, at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


MICHELLE L. WEST

JUN-16-1997 14:48

GARCIA, EMMONS & MARANGA

818 388 0020 P.06/08

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 15260 Ventura Boulevard, Suite 1700, Sherman Oaks, California 91403.

On June 16, 1997, I served the forgoing document described as NOTICE OF REMOVAL OF CIVIL ACTION on the interested parties in this action as follows:

PATRICK F. O'CONNOR, ESQ.
5464 Grossmont Center Drive
Third Floor
La Mesa, CA 91942

x By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing of mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sherman oaks, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after the day of deposit for mailing an affidavit.

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By Overnight Courier. I caused the above referenced document to be delivered to an overnight courier service for delivery to the above addressee(s).

Executed on June 16, 1997, at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


MICHELLE L. WEST

JUN-16-1997 14:48

GARCIA, EMMONS & MARANGA

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 15260 Ventura Boulevard, Suite 1700, Sherman Oaks, California 91403.

On June 16, 1997, I served the forgoing document described as NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT on the interested parties in this action as follows:

PATRICK F. O'CONNOR, ESQ.
5464 Grossmont Center Drive
Third Floor
La Mesa, CA 91942

 x By placing a true copy thereof enclosed in a sealed envelope. I am "readily familiar" with the firm's practice of collection and processing of mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Sherman oaks, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after the day of deposit for mailing an affidavit.

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Executed on June 16, 1997, at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


MICHELLE L. WEST

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

KATHLEEN T. JESSEN

DEFENDANTS

FOLLETT COLLEGE STORES CORPORATION,
DOES 1 THROUGH 25

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) River Grove

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

PATRICK F. O'CONNOR, ESQ.
5464 Grossmont Ctr. Dr. 3d Fl
La Mesa, CA 91942

ATTORNEYS (IF KNOWN) '97 cv 1154 IEG (CGA)

TERRI L. MASSERMAN, ESQ.
15260 Ventura Blvd., #1700
Sherman Oaks, CA 91403-5327

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ U.S. Government Plaintiff ☐ Federal Question (U.S. Government Not a Party)
☐ U.S. Government Defendant ☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- PT DEF
Citizen of This State ☒ ☐ Incorporated or Principal Place of Business in This State ☐ ☐
Citizen of Another State ☐ ☒ Incorporated and Principal Place of Business in Another State ☐ ☒
Citizen or Subject of a Foreign Country ☐ ☐ Foreign Nation ☐ ☐

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF THE CASE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

Diversity of Citizenship 28:1441

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	LABOR	REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 1252	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motion to Vacate Sentence
<input type="checkbox"/> Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Appeal 28 USC 1253	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 520 Habeas Corpus
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 424 Appeal 28 USC 1254	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 230 Rent Control & Eviction	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 Other
<input type="checkbox"/> Negligible Instrument	<input type="checkbox"/> 330 Federal Employee's Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Appeal 28 USC 1255	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 240 Tort up Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other
<input type="checkbox"/> 130 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Federal Employer's Liability	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 426 Appeal 28 USC 1256	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine	<input type="checkbox"/> 650 Airline Rugs	<input type="checkbox"/> 427 Appeal 28 USC 1257	<input type="checkbox"/> 760 Security Act	<input type="checkbox"/> 250 Tort Product Liability		
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 Appeal 28 USC 1258		<input type="checkbox"/> 255 Tort Product Liability		
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 670 Other	<input type="checkbox"/> 429 Appeal 28 USC 1259		<input type="checkbox"/> 260 Tort Product Liability		
<input type="checkbox"/> 160 Stockholders Sale	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 430 Appeal 28 USC 1260		<input type="checkbox"/> 265 Tort Product Liability		
<input type="checkbox"/> Other Contract	<input checked="" type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 431 Appeal 28 USC 1261		<input type="checkbox"/> 270 Tort Product Liability		
<input type="checkbox"/> 165 Contract Product Liability			<input type="checkbox"/> 432 Appeal 28 USC 1262		<input type="checkbox"/> 275 Tort Product Liability		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding ☒ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER E.A.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/16/97 #30882 \$1500

Terri L. Masserman